

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

BETTY NEULEIB,

Plaintiff,

v.

AMERICAN MEDICAL SYSTEMS,  
INC., AMERICAN MEDICAL  
SYSTEMS, LLC, and ASTORIA

WOMEN'S HEALTH LLC,  
Defendants.

NO. 3:20-CV-05144-SAB

**JURY TRIAL SCHEDULING  
ORDER**

**JURY TRIAL SCHEDULED FOR  
JANUARY 31, 2022**

A telephonic scheduling conference was held in this matter on September 22, 2020. Shawn Fox, Clint Casperson and Brian Weinstein appeared on behalf of Plaintiff; Rachel Weil and Anne Talcott appeared on behalf of Defendants.

The Court has reviewed the parties' Joint Status Certificate, ECF No. 32, has heard from counsel, is fully informed, and orders the following schedule for jury trial in this matter.

Accordingly, **IT IS ORDERED:**

**PROFESSIONALISM AND COURT-ASSISTED MEDIATION**

**1. Civility and Professional Conduct.** Counsel should review and employ the Washington Rule of Professional Conduct 3.4 (Fairness to Opposing Party and Counsel).

**2. Scheduling Order is Binding.** Rule 16(f) of the Federal Rules of Civil

1 Procedure provides for sanctions for failure to obey the Scheduling Order. The  
2 Court will usually accept stipulations to modify the dates specified in this Order,  
3 but modifications of pretrial deadlines may also result in a modification of the trial  
4 date.

5 **3. Settlement Conference/Mediation.** The parties are encouraged to engage in  
6 settlement negotiations as early as possible and should contact the Court if they  
7 believe a settlement conference would be helpful.

#### 8 TRIAL DATES

9 **4. Jury Trial.** The jury trial shall commence on **January 31, 2022**, at **9:00 a.m.** in  
10 **SEATTLE**, Washington. Counsel estimates a trial length of twelve to fifteen days.

11 **5. Pretrial Conference.** An in-person pretrial conference will be held on **January**  
12 **18, 2022**, at **9:00 a.m.** in **SEATTLE**, Washington.

#### 13 DISCOVERY DEADLINES

14 **6. Initial Disclosures.** The parties indicate that initial disclosures have been  
15 exchanged.

#### 16 **7. Expert Disclosures.**

17 *A. Initial Expert Disclosures.* Each Party shall identify its experts and serve  
18 written reports as required by Rule 26(a)(2) on all other parties no later than **June**  
19 **15, 2021**. Each Party shall also provide dates for which those experts can be  
20 available for deposition.

21 *B. Rebuttal Expert Disclosures.* Each Party shall identify its rebuttal experts  
22 and serve written reports as required by Rule 26(a)(2) on all other parties no later  
23 than **July 15, 2021**. Each Party shall also provide dates for which those experts can  
24 be available for deposition.

25 *C. Modifications.* The parties may modify the deadline for exchange of  
26 expert disclosures by joint stipulation filed with the court; a motion is not required.

27 **8. Discovery.** Discovery shall be case-specific in nature, focusing on Plaintiff's  
28 specific claims (e.g. discovery related to Plaintiff's medical history and alleged

injuries, her treating and implanting physicians, the manufacturing information related to the specific device implanted in Plaintiff).

*A. Discovery Limitations.*

i. *Depositions.* No more than ten depositions may be taken by the plaintiffs, defendants, or third-party defendants without leave of the Court. Fed. R. Civ. P. 30(a)(2), (d)(1). Depositions shall be limited to a maximum of three (3) hours for fact depositions and six (6) hours for expert depositions.

ii. *Interrogatories.* In lieu of Requests for Admissions and Written Interrogatories, the Parties agree to follow the discovery procedure used in MDL NO. 2325 and the MDL Court's Pretrial Order ("PTO") #239. Specifically, the Parties agree to provide the disclosures set forth in PTO #239, including a Plaintiff Fact Sheet and Defendant Fact Sheet.

iii. *Requests for Production.* The Parties agree that Plaintiff will accept all documents that AMS Defendants have produced or will produce as part of AMS Defendants' MDL Production in this litigation. The Parties further agree that Plaintiff will accept the MDL production in the format in which it was produced in the MDL, which was produced in accordance with MDL PTO #15.

*B. Discovery Deadline.* All discovery shall be completed on or before **September 13, 2021.**

*C. Responses.* To be timely, discovery requests must be served sufficiently in advance of the deadline to allow for timely response by the cutoff date.

*D. Necessity.* The parties shall file no discovery except as necessary to support motions or objections.

*E. Discovery Conferences.* To avoid wasted time and expense, Counsel may contact chambers to schedule a telephonic conference to obtain an expedited ruling on discovery disputes. Prior to the conference, each party may submit to the Court a one-page summary explaining the discovery dispute.

F. Within thirty (30) days after entry of this Order, Plaintiff will produce the

1 completed Plaintiff's Fact Sheet and related information utilized in the MDL 2325.

2 G. Within sixty (60) days after entry of this Order, Defendants will produce  
3 the Defendants' Fact Sheet and related information utilized in MDL 2325.

#### 4 **MOTION DEADLINES**

5 **9. Motions to Amend Pleadings.** Any motion to amend the pleadings shall be  
6 filed and served by **July 6, 2021**.

7 **10. Daubert Motion Deadline.** Challenges to the admissibility of expert opinion  
8 testimony shall be made by written motion and filed by **July 23, 2021**. If the party  
9 challenging expert testimony anticipates that an evidentiary hearing shall be  
10 required, the party shall so advise the Court and opposing counsel in conjunction  
11 with the filing of its motions.

12 **11. Dispositive Motions.** All dispositive motions shall be filed and served on or  
13 before **September 21, 2021**.

14 **12. Motions *in Limine*.**

15 A. *Motions in Limine*: shall be filed and served on or before **December 20,**  
16 **2021**.

17 B. *Responses*: shall be filed and served on or before **December 27, 2021**.

18 C. *Replies*: shall be filed and served on or before **January 3, 2022**.

19 D. *Notation*: *Motions in limine* shall be noted for hearing at the pretrial  
20 conference.

#### 21 **TRIAL PREPARATION DEADLINES**

22 **13. Exhibit and Witness Lists.**

23 A. *Exhibit Lists and Witness Lists*: shall be filed and served and exhibits  
24 made available for inspection (or copies provided), on or before **December 27,**  
25 **2021**.

26 B. *Identification*: The witness list shall include identification of each  
27 witness's testimony.

28 //

1        *C. Notation of Exhibits:* Where feasible, all exhibits identified in depositions  
2 shall be pre-marked with the exhibit numbers that will be used at trial. Plaintiff's  
3 trial exhibits are to be numbered 1 through 199; Defendant's exhibits are to be  
4 numbered 200 and following.

5        *D. Objections:* Objections to the opposing party's witness list or exhibit list  
6 and any accompanying briefs shall be filed and served on or before **January 3,**  
7 **2022.**

8        *E. Responses:* Responses, if any, to objections shall be filed and served on or  
9 before **January 10, 2022.**

#### 10 **14. Pretrial Exhibit Stipulation.**

11        *A. Stipulation:* The parties shall prepare a pretrial exhibit stipulation that  
12 shall contain each party's numbered list of all trial exhibits with the opposing  
13 party's objections to each exhibit, including the basis of the objection and the  
14 offering party's brief response. All exhibits to which there is no objection shall be  
15 deemed admitted, subject to any objections at trial that could not be raised in  
16 advance.

17        *B. Deadline:* The pretrial exhibit stipulation shall be filed on **January 10,**  
18 **2022.**

19        *C. Objections to witness and exhibits shall be heard at the pretrial*  
20 *conference.*

#### 21 **15. Designation of Testimony.**

22        The parties shall notify the Court on or before **December 17, 2021** whether  
23 deposition testimony will be used at trial. The Court will then schedule a hearing to  
24 review all designated testimony and objections so that a final edited version of the  
25 deposition testimony can be prepared for trial.

#### 26 **16. Pretrial Order.**

27        *A. Deadline:* A joint Pretrial Order, prepared in accordance with the format  
28 provided in Local Rule 16.1(e), shall be filed on or before **January 10, 2022** and a

1 copy e-mailed in Word format to the Court at [bastianorders@waed.uscourts.gov](mailto:bastianorders@waed.uscourts.gov).

2 B. *Consistency*: The list of exhibits contained in the joint Pretrial Order shall  
3 reflect the exhibit marking scheme described above in paragraph 13(C).

4 C. *Duplicative Exhibits*: In preparing the joint Pretrial Order, the parties  
5 shall confer regarding duplicate exhibits and determine which party will submit  
6 such exhibits for trial.

7 **17. Trial Briefs and Proposed Voir Dire.** Trial briefs and voir dire shall be filed  
8 by **January 6, 2022**.

9 **18. Jury Instructions.** No later than **January 6, 2022**, the parties shall file jointly  
10 proposed jury instructions.

11 A. *Confer*. The parties shall confer regarding jury instructions and file  
12 jointly proposed jury instructions and a table of proposed Jury Instructions. The  
13 jointly proposed Jury Instructions should address only issues that are unique to this  
14 case and shall include instructions regarding the elements of each claim, any  
15 necessary definitions, and a proposed verdict form.

16 B. *Modifications*. If any proposed instruction is a modified version of model  
17 instructions or deviate from model instructions, the parties shall identify the  
18 modification and cite legal authority for the modification.

19 **19. Submissions on the First Day of Trial.** The Court requires that the following  
20 be submitted to the courtroom deputy clerk on the first day of trial:

21 A. *Exhibits*. Exhibits for presentation at the trial in tabbed binders indexed  
22 by exhibit number with exhibit tags placed consistently on the bottom right corner  
23 of each exhibit. Counsel shall submit to the Court an original binder and two  
24 copied binders of their exhibits together with three discs or flash drives containing  
25 the same.

26 B. *Exhibit List*. One copy of a final joint exhibit list.

27 C. *Witness List*. One copy of witness lists in the order in which the witnesses  
28 are expected to be called to testify.

**MODIFICATIONS**

**20. Good Cause.** Pursuant to Rule 16 of the Federal Rules of Civil Procedure, this schedule shall not be modified unless the Court finds good cause to grant leave for modifications.

**PRIOR MDL ORDERS**

**21.** The parties have agreed to be bound by the following Orders and procedures used in the MDL No. 2325 case:

- a. PTO #239, ECF No. 32, Ex. A.
- b. PTO #15, ECF No. 32, Ex. B.
- c. PTO #171, ECF No. 32, Ex. C.

**22.** The Court **adopts** the protective order that was entered in MDL PTO # 169, ECF NO. 32, Ex. D.

**IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter this Order and to provide copies to counsel.

**DATED** this 22nd day of September 2020.



STANLEY A. BASTIAN  
United States District Judge